

Population Control Laws in India - A Brief Analysis

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ABSTRACT

According to world bank's data, the population of India is estimated to be approximately 1.38 billion in 2019. Hence, the legislature thought it is necessary to implement population control laws through the Population Control Bill of 2019 that was introduced in the Upper house to ensure resources and the people have a decent ratio in the country. The bill received a lot of criticism and appreciation from across the country. The main research problem of the paper would revolve around the comparison of the various population control policies such as the recent The Uttar Pradesh Population (Control, Stabilisation and Welfare) Bill, 2021 and China's one child policies and population control laws of various other countries. These laws will be contrasted with the right to life under the article 21 of the Indian constitution. At the end, the paper will also suggest some policies that might have a better outcome keeping in mind all the constraints the present one would receive. The paper would also examine two child and one child policies and the legality of incentivising the ones who opt for the same like the Uttar Pradesh population (control, stabilization and welfare) bill of 2021. It shall also discuss the cost benefit analysis of the policies.

INTRODUCTION

Population control is a relatively new phenomena as a key worldwide development strategy. Its beginnings, on the other hand, may be traced back to societal currents in the late nineteenth and early twentieth centuries, culminating in an organised birth control campaign in Europe and the United States. Many of today's discussions over population control and women's rights are predicated on the tensions and ambiguities in that movement's past. And how the people reacted to Sanjay Gandhi's decision to implement a massive forcible sterilisation programme in order to halt population increase.

Whether it is affordable for governments to bring population control policies as laws or as is it better to introduce it as a programme under a ministry will also be analysed in the paper as a law can have conflicts with the other personal laws and the fundamental rights itself. Population control is referred to as the process of unnaturally altering the rate of population growth through laws and regulations by limiting the birth rate of the people.

LITERATURE REVIEW

Kaval Gulhati is a population and development expert with expertise in health and demography, institutional development, training, project management, and programme design and execution.

In the paper, 'Compulsory Sterilization: The Change in India's Population Policy'⁶⁷The author has discussed the population control measures that were undertaken in India such as the compulsory sterilization. The paper has discussed family planning programmes post-independence and the socio economic and cultural effect of the same. The author also provides an insight into how these policies were to be implemented in modern states and backward states substantively as there was a difference in the way of adopting

⁶⁷ Gulhati, K. (1977). Compulsory Sterilization: The Change in India's Population Policy. *Science*, 195(4284), 1300-1305.

the family planning programs in them substantively. Lastly, the author has also discussed the way to a new legislation that provides incentives for adopting these policies unlike China's policies.

Here, the author has appraised the concept of incentivizing and disincentivizing the one who does and does not adopt the policies. However, she does not point out the constitutional provisions but she discusses the effects of these policies on different socio-economic and cultural backgrounds.

T. J Samuel an author is the author of many articles on the population and development at the same time. He has written papers such as 'The impact of immigration on Canada's population' and 'population control in Japan: lessons for India'.

In this article, 'The Development of India's Policy of Population Control'⁶⁸, the author has highlighted the reasons for slow evolutions for policies and the factors that has hindered the development with respect to population control policies in the country. He has discussed in detail the population control phases of the country in detail through four phases, that are firstly, the period of indifference (before 1947), secondly, the period of neutrality (1947-1952), thirdly, the period of experimentation (1952-1961) and the beginning of policy of population control (1961 onwards).

This paper has elaborately discussed the phases in which India has adopted the population control policies. It does not appraise or condemn the policies as it has a neutral approach. However, in the paper it will contribute as it clearly discusses the reasons for the policies to have failed so that a conclusion can be drawn.

Dr. Aparajita Chattopadhyay is a senior professor at International Institute for population sciences and has written

⁶⁸ Samuel, T. (1966). The Development of India's Policy of Population Control. The Milbank Memorial Fund Quarterly, 44(1), 49-67

⁶⁹ Aparajita Chattopadhyay. (2004). Population Policy for the Aged in India. Economic and Political Weekly, 39(43), 4694-4696.

over 25 papers on the implementations, unintended consequences etc. on population policies in India.

In the paper, 'Population policy for the aged India'⁶⁹, examines the requirements and expectations of the families. Furthermore, given the diverse character of India, developing a plan of action for a specific group of individuals rather than a single strategy addressed at the entire population is more realistic.

This paper highlights a crucial point of a single strategy not functioning in the country as it is extremely diverse which provided an insight into how a single strategy might not work in India and hence it would contribute in drawing necessary suggestions. However, blanket legislation has proved to be effective in India before.

The author Mahinder D Chaudhry is an economist. He has drawn the effects of population growth with the environment in an economic analysis.

In the paper, 'population policy in India'⁷⁰, The financial allocations made for the family planning program in India since the early 1950s suggest that a very high priority is attached to population control policy. The aim for the country as a whole is most likely to be met, notwithstanding modest progress in lowering the crude birth rate, notably in the states of Uttar Pradesh and Haryana. This paper would contribute by providing relevant data of particular states like Uttar Pradesh. The significant argument here is to concentrate more on certain states by having state legislations instead of a national one.

The author Lynn C Landman is a scholar in the field of international family planning programs formulation. In the article Birth Control in India: The Carrot and the Rod?⁷¹ She has discussed

⁷⁰ Chaudhry, M. (1989). Population Policy in India. *Population and Environment*, 11(2), 101-121

⁷¹ Landman, L. (1977). Birth Control in India: The Carrot and the Rod? *Family Planning Perspectives*, 9(3), 101-110.

It is cruel for a developing country to force its citizens to utilise birth control techniques. However, after interviewing couples seeking sterilisation, contraception, and abortion, as well as physicians, nurses, and administrators, this author discovered that individuals desired and needed family planning, and that it was being delivered in an efficient and compassionate manner.

The paper discusses the compulsory sterilization that was done in India and analyses how it affects the people. Based on this paper, which does not support the coercive birth control methods, will help to draw advantages to the new policies that are in place and pressing the population panic button instead of formulating a policy considering other factors is necessary.

The paper, *Population and Law: Legal Control of Demographic Processes*⁷² discusses the obsolescence of contemporary demo-legal control, control of demographic processes by family law and the legal significance of age and most significantly, Family Planning as a Human Right: The United Nations Declaration. In this paper, the author has discussed the laws relating to population control which would form the basis for the analysis part of the paper. However, the author has not highlighted all the laws in place. Family planning as a human right which is also a main point of focus of the paper will contribute in forming a thesis point.

SN Agarwal, the author is a specialist in the field of population studies. He has authored the book "India's Population Problems". In the paper, *Population Control in India: Progress and Prospects*⁷³ He has studied the population trends in India and has compared it to that of other countries and has pointed out the mistakes as to why the policy did not work in India. The paper does not take into account all the policies but however, it gives an overall perspective on the reasons for malfunctioning and also

provides suggestions. Hence these suggestions can be analysed with the policies in place presently.

RESEARCH METHODOLOGY

The methodology for this research will be qualitative in nature with reliance on primary and secondary sources of data. The method adopted here is qualitative as it helps in understanding the research hypothesis to prove the argument of the author. Qualitative method or doctrinal research is generally used as it is dependent on the court cases, opinions of eminent jurists and the law concerning the subject matter at hand. The topic is heavily dependent on the analysis of various case laws and economic analysis of the policy to infer the present standing of law and the stance of the courts and the prospective parents in the country relating to the adoption of such policies.

RESEARCH PROBLEM

- Providing incentives for the families who adopt a population policy imposed by the government from time to time is a violation of articles 21 and article 14 of the Indian constitution.
- Article 21 of the constitution states that Article 21 of Constitution of India: Protection of Life and Personal Liberty. Article 21 states that "No person shall be deprived of his life or personal liberty except according to a procedure established by law." Thus, article 21 secures two rights: 1) Right to life, and. 2) Right to personal liberty. Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India. It states: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
- The second part of the research problem is if de-incentivizing the families who failed to adopt a

⁷² Weintraub, P. (1974). *Population and Law: Legal Control of Demographic Processes. European Demographic Information Bulletin*, 5(3), 129-144.

⁷³ Agarwala, S. (1960). *Population Control in India: Progress and Prospects. Law and Contemporary Problems*, 25(3), 577-592.

certain policy is valid as per the articles mentioned above. Providing incentives for the people who adopt a certain policy is merely to encourage them to have smaller families for the benefit of the nation as a whole if seen in an economic perspective as rational people respond to incentives. However, if doing the opposite to the ones who fail to adopt such policies is not constitutionally valid.

RESEARCH QUESTION

How do the population policies that incentivise the families who adopt it and disincentive the ones who do not adopt such policies violate articles 14 and 21 of the constitution of India?

CLAIM STATEMENT

The claim statement is that the population control laws are necessary for the overall development of the country and they are being held back in the name of invalidity as per articles 14 and 21 of the Indian constitution. The fundamental rights of the right to equality and the right to life and liberty of the parents intending to have more children than specified by the policy are being threatened by such policies. With the rampant depletion of resources in the country, being the highest populated country with respect to population density, it is high time the country adopts a population policy. Every rational person responds to incentives and incentivizing the ones who adopt the policies and de-incentives the ones who do not will definitely promote adoption of the policies.

Thomas Robert Malthus, an economic and demographic scholar in his book 'Essay on the Principle of Population', stated that it would lead to misery if population growth is left unchecked as the food supply for the same increase in the population would not suffice.⁷⁴ To begin with, his theory emphasised that the natural sex instinct of men would result in increase of population in geometrical progression that is,

it would double in 25 years in case it is not controlled at the right time. And however, the supply of food will increase in Arithmetic Progression and hence gradually, the human beings will outrun the food supply. And due to this phenomenon, Malthus suggested that the only way to balance food supply and the growing population is by controlling the population by imposing restraints to the human beings to ensure they do not procreate more than the need. He also suggested that if the preventive measure does not work, then a positive check such as war, epidemic etc. should be adopted to reduce population.

However, on the contrary this theory failed to consider other factors of the economic perspective. Malthus theory is merely based on the law of diminishing demand. He did not consider the increase of man-power, knowledge and skill that would bring the supply and demand curves to a reasonable equilibrium. In countries like India, where there was a massive growth of food supply with the 'green revolution', the theory would fail. It is also significant to consider a broader perspective other than the relationship of food with the increasing population. Other resources such as natural resources and their availability at a particular geographical area should be considered. Hence, the general theory of optimal population which states that if a family has a child, then they will reduce their per capita and increase their size.⁷⁵ These theoretical concepts justify the need of population control policies with respect to the scarcity of resources and in addition would also analyse if it is possible to have more than a certain number of children or not.

However, the above theory is the right of human beings to procreate more than the standard number of children set by the law or the society. Right to procreate is a positive right and a natural right. In a utilitarian perspective, an action is just if it maximizes the utility. The concept is

⁷⁴ Boserup, Ester. 1965. *The Conditions of Agricultural Growth*. London: Allen and Unwin. 1981. *Population and Technological Change: A Study of Long-Term Trends*. Chicago: University of Chicago Press.

⁷⁵ Ng, Y. (1986). *On the Welfare Economics of Population Control*. *Population and Development Review*, 247-266. doi:10.2307/1973110

consequentialist because, by exercising the right, the child can either be of utility

by being an asset or a hindrance by exhausting the resources and hence, this theory would be unconvincing to the paper. Whereas Deontological Theory which focuses merely on the actions and examining if it is right or wrong rather than the consequences and emphasises on duty and obligation can justify population control laws. In the case of Justice KS Puttaswamy v. Union of India,⁷⁶ It was held that the right to reproduce is a fundamental right and it comes under the ambit of Right to Privacy. This judicial decision will contribute to examining whether the right to reproduce as much as one wishes to also is a fundamental right. Hohfeld evaluates rights in the form of jural correlatives. By evaluating the above right as per Hofled, a man has a right to have as many children as he wants and it is the duty of the state to ensure his rights are exercised without any disruptions. In a similar way, if one is granted the privilege of choosing to have as many children as they want, then no other person would have a right to stop them from doing so. This analysis would contribute to studying whether it is right for certain policies to incentivize the people who opt to have a particular number of child(ren) only.

On the 7th of February 2020, Hon'ble Member of Parliament Shri Anil Desai introduced The Constitution (Amendment) Bill, 2020 (Insertion of New Article 47A). The bill aimed to insert the article 47A that reads as follows. "47A. The State shall promote small family norms by offering incentives in taxes, employment, education etc. to its people who keep their family limited to two children and shall withdraw every concession from and deprive such incentives to those not adhering to small family norm, to keep the growing population under control."⁷⁷

This constitutional amendment bill failed to become a constitutional amendment act and hence, insertion of the above article was not possible. However, this article was proposed in addition to the national population policy of 2000. The policy aims at encouraging married couples to have only two children by incentivizing them for spacing in between births and also by aiding in the availability of contraceptives in various parts of the country.⁷⁸

In states like Rajasthan, a person having more than two children is not eligible for appointment in government jobs and the Rajasthan Panchayati Raj Act, 1994 states that if any person has more than 2 children, he/she will not be eligible to contest in panch member election. Under Madhya Pradesh Civil Service Rules, if a third child is born after 26th January of 2001, the parent is ineligible for government and judicial appointments. In the state of Maharashtra, candidates are not eligible to contest in Urban local body as well as Panchayati elections if they have more than two children. As per Maharashtra Service rules, a person is barred from being appointed in the state government positions if they have more than two children and a woman who has more than two children been not eligible to avail the benefits of the public distribution system that is the ration card. The states of Gujarat, Andhra Pradesh, Telangana, Odisha and Uttarakhand have also barred persons having more than two children to contest in the elections of the Local body.

Entry 20-A in the Concurrent List of the Seventh Schedule⁷⁹ in the constitution of India, inserted through the 42nd constitutional amendment in 1976, permits both Union and State legislatures to enact laws on population control and family planning. The demands for a population control law are based on this entry in the Seventh Schedule. And hence, with the above laws, it is clear that the laws are leaning towards having a population control law. However, the fundamental rights that are right to equality under article 14

⁷⁶ AIR 2017 SC 4161

⁷⁷ Anil Desai MP, Rajyasabha, The Constitution (Amendment) Bill, 2020 (Insertion of New Article 47A)

⁷⁸ 2 Press Information Bureau Government of India Ministry of Health and Family Welfare 'National Population Policy', 11-December-2015

⁷⁹ Constitution of India, 26th November 1950

of the Constitution and right to life and personal liberty that is guaranteed under article 21 of the constitution can be violated. Right to equality will be hindered by restricting the people who choose to have more than two children from being appointed in the state government jobs and in contesting in elections of the local bodies as it is discriminatory in nature. However, India is a country that has always believed in substantive equality with the existence of reservation since the constitution emerged. Another argument is that these laws may violate article 21 as it is the right of the married couple to choose how many children they wish to have. However, here with the enforcement of these laws, a person is not restricted from having more than two children but his or her privileges are taken by the state. And these laws are justified as the country will soon be scared of basic resources such as water, food, land and wood if the population is kept unchecked. In order for the country to be economically stable, the natural resources should be proportional to the human resources and this proportion can be kept in control only if there are laws that ensure that the fertility rate is approximately 2.0.

In the landmark case of, *Air India v. Nargeesh Meerza*⁸⁰ the apex court has upheld the validity of a rule which would terminate the services of employment of air hostesses with two existing

children on their third pregnancy. Reasons given were two-folded according to the court. They stated that, firstly, the provision was seen as being protective of the larger health interests of the air hostesses and upbringing of their children and secondly, it would 'whip up' the family planning programme. "When the entire world is faced with the problem of population explosion, it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels so as to meet the danger of overpopulation which, if not controlled, may lead to serious social and economic problems throughout the world." This case not only discusses the rights of women but also

emphasizes on the need for adoption of family planning programmes by the citizens. However, it is important to discuss whether termination of the employment of the flight attendant is constitutionally valid as it restricts the right to employment of the air-hostesses.

*Javed v State of Haryana*⁸¹ which involved a challenge to Section 175(1) of the Haryana Panchayati Raj Act, 1994. A person with more than two live children was barred from holding certain panchayat positions under the law. The petitioners stated that the restriction violated Article 14's right to equality since it did not exclude those with two or fewer children, as well as Article 21's right to life and personal liberty because it restricted people from freely selecting the number of children they wanted.

The Supreme Court, however, upheld the law holding that the classification created by it was "founded on intelligible differentia" and based on the objective of controlling population growth. With respect to the argument on reproductive autonomy under Article 21, the supreme court said "the lofty ideals of social and economic justice, the advancement of the nation as a whole and the philosophy of distributive justice cannot be given a go-by in the name of undue stress on fundamental rights and individual liberty".

This case basically discusses the foundation of this paper as article 14 and 21 are challenged.

In this case, the apex court has justified the violation of the said articles. It is also very significant as it has substantially discussed the concept of 'distributive justice' and how the same can be applied to the population control policies in India. India is a country that has believed in substantive development and if restricting only one particular class or category of people in having a desirable number of children is legally sound and if it will be effective in the long run or will be a prey to unintended consequences.

⁸⁰ (1981) 4 SCC 335

⁸¹ (2003) 8 SCC 369

In the recent case of *Ashwini Kumar Upadhyay v. Union of India*,⁸² The Supreme Court held that the birth of a third child would automatically disqualify a person from contesting panchayat polls and from being a member or sarpanch. In March 2019, the Supreme Court denied a plea filed by attorney Ashwini Upadhyay asking the Election Commission to include a condition that "political parties should not field candidates who have more than two children." However, Upadhyay's campaign for a national two-child policy convinced the Supreme Court to look at the matter. The Supreme Court requested a response from the Centre on Upadhyay's plea for a population control law in India in January 2020.

The Centre said that it is "unequivocally" opposed to forcing people to have a set number of children in order to limit the population. In an affidavit submitted in December 2020, the Union government said that India's family assistance programme offers couples the freedom to choose the size of their family without being compelled, rejecting the necessity for a two-child restriction or a particular statute regulating the number of Indian families. In this case, it is ironic to observe that the court has decided in contrast to the above discussed cases. Here, the court emphasizes on the fact that it cannot coerce any married couple to have a certain number of children only for the sake of employment. However, many other cases prove otherwise. This case will help in supporting the argument for the discrimination with respect to employment for the number of children a person has. The court earlier has stressed on the need for adopting the two-child norms but here it rejected the need for a law that limits the size of families.

CONCLUSION

A legislation exclusively for population control is the need of the hour in India. It should promote a two child policy norm so that everyone can receive quality education, safe drinking water, health facilities, decent living and other essentials for the welfare of the people. Through the

legislation, voluntary and free sterilization should be promoted and given to either of the spouses. As per the UN department of Economic and Social Affairs estimates India's Population will reach 1.5 billion by 2030 and hit 1.64 billion in 2050 which will make India the most populous country in the world by overtaking China. China by imposing a one-child policy, slowed the pace of their population growth unlike India. The people in the country lack access to basic resources by implementing such two-child policies, more people can get access to the resources such as health and educational facilities, drinking water etc. without any discrimination. The legislation would also promote a clean and healthy environment guaranteed under article 21 of the Indian Constitution.

However, there might commence a few unintended consequences such as increase of illegal sex selective abortions as one can have only two children to avail the incentives. There are possibilities that such population control policies result in population imbalance like China when they had implemented a one-child policy and after facing the consequences they had to impose a three-child policy to bring the balance back. However, the draft legislations discriminate against government servants which is a violation of Article 14 of the Indian Constitution. It should be applicable to all irrespective of their jobs.

REFERENCES

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